



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

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***Hazardous Materials Safety Law
Division***

LETTER OF INTERPRETATION

June 16, 2011

Nicole P. Aranas
Village of Itasca
Community Development Department
550 West Irving Park Rd.
Itasca, IL 60143

Reference No. 10-0239

Dear Ms. Aranas:

This is in response to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the federal regulations pertaining to the storage of hazardous material incident to transportation. You ask the following:

- Are rules established by a local zoning authority regulating the location of hazardous material storage incident to movement preempted by federal hazardous materials regulations?
- Do any Federal regulations limit the quantity of hazardous materials that may be stored incidental to transport within a single building?
- Do any Federal regulations govern the size of a building that may be used for hazardous materials storage incidental to transportation?
- Do any Federal regulations govern the level of fire protection required to be installed in a building used for hazardous materials storage incidental to transport?
- Do any Federal regulations govern the distance permitted between a building used for hazardous materials storage incidental to transport and other buildings?
- Is local authority to regulate buildings and land used for hazardous material storage incidental to transport with respect to quantities of materials stored, sized of buildings

used, level of fire protection installed and distance to other buildings otherwise preempted by Federal regulations?

To answer your first question concerning preemption, as explained in §171.1(f) of the HMR, a facility may be subject to applicable laws and regulations of state and local governments even though functions are being performed at that facility which are regulated under the HMR. However, a requirement of a state, local, or tribal government that conflicts with requirements in the HMR is preempted, unless otherwise authorized by another Federal statute or the Department of Transportation (DOT) issues a waiver of preemption. The Pipeline and Hazardous Materials Safety Administration (PHMSA) makes a preemption determination applicable to specific non-Federal requirements on a case-by-case basis. The procedures for the DOT to make administrative determinations of preemption are set forth in subpart C of part 107.

As for your remaining questions, as noted, preemption determinations are made on a case-by-case basis. We are unable to answer your questions definitively without a more detailed set of facts on which to apply the HMR. However, DOT found that the HMR preempts non-Federal requirements in the situations listed below, which we provide as a guide to further your understanding.

1. Packing/Repacking of HM

- State prohibition against any repackaging/re-containerization of hazardous wastes is preempted as not substantially the same as requirements in the HMR. PD-12(R) (New York), 60 Fed. Reg. 62527 (Dec. 6, 1995); PD-12(R) (New York), 62 Fed. Reg. 15970 (Apr. 8, 1997); PD-25(R) (Missouri) 66 Fed. Reg. 37089 (July 16, 2001).

2. Marking/Labeling/Placarding

- Requirements for identification/registration/inspection certification on packagings and distinctive labels on outer containers are preempted because they are not "substantively the same" as HMR requirements for marking and labeling. PD-4(R) (California), 58 Fed. Reg. 48933 (Sept. 20, 1993); PD-4(R) (California), 60 Fed. Reg. 8800 (Feb. 15, 1995); PD-29(R) (Massachusetts) 69 Fed. Reg. 34715 (June 22, 2004).
- Placarding and other hazarding warning requirements are preempted if they are in addition to or different from Federal placarding requirements. IR-2 (Rhode Island), 44 Fed. Reg. 75566 (Dec. 20, 1979); IR-3 (Boston, MA), 46 Fed. Reg. 18918 (Mar. 26, 1981); IR-3 (Boston, MA), 47 Fed. Reg. 18457 (Apr. 29, 1982); IR-24 (San Antonio, TX) 53 Fed. Reg. 19848 (May 31, 1988), IR-30 (Oakland, CAa), 55 Fed. Reg. 9676 (Mar. 14, 1990); IR-30 (Oakland, CA), 55 Fed. Reg. 12111 (Mar. 30, 1990).

3. Shipping Papers

- Additional or different shipping paper requirements are generally preempted. IR-4 (Washington State), 47 Fed. Reg. 1231 (Jan. 11, 1982); IR-4 (Washington State), 47 Fed. Reg. 33357 (Aug. 2, 1982); IR-4 (Washington State), 47 Fed. Reg. 34074 (Aug. 5, 1982).

4. Segregation/Separation/Interim Storage

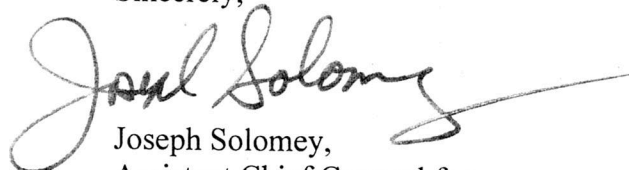
- State or local prohibition of hazardous material storage incidental to transportation without a state or local permit at places where, and for times when, the HMR allow such storage is preempted. PD-30(R) (Houston, Texas), 71 Fed. Reg. 9413 (Feb. 23, 2006).
- State or local imposition of containment and segregation requirements for the storage of HM incidental to transportation thereof different from, or additional to those in the HMR create confusion concerning such requirements and the likelihood of noncompliance with the HMR. IR-19 (Nevada), 52 Fed. Reg. 24404 (June 30, 1987); IR-19 (Nevada), 52 Fed. Reg. 29468 (Aug. 7, 1987); IR-19 (Nevada), 53 Fed. Reg. 11600 (Apr. 7, 1988); IR-28 (San Jose, CA) 55 Fed. Reg. 8884 (Mar. 8, 1990).

5. Routing Requirements

- Without adequate safety justification and appropriate coordination with, and concern for safety of people in, adjoining jurisdictions, routing restrictions (including time and weather restrictions) are preempted – particularly if they result in increased transit times. 49 CFR 397.

I hope this information is helpful. Please contact this office if you have any additional questions.

Sincerely,



Joseph Solomey,
Assistant Chief Counsel for
Hazardous Materials Safety